



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201505045

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Uniform Issue List: 402.08-00

TIER 1

Legend

Taxpayer A =

Plan B =

IRA C =

Account D =

IRA E =

Employer F =

Financial Institution G =

Financial Institution H =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Amount 6 =

Amount 7 =

Dear :

This is in response to your request dated August 20, 2014, as supplemented by correspondence dated October 7, and October 21, 2014, in which you request, through your authorized representative, a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution from Plan B totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover of a portion of Amount 1, Amount 6 and Amount 7, from Plan B to an individual retirement arrangement ("IRA") described under section 408(a) of the Code, within the 60-day period prescribed by section 402(c)(3), was due to the failure of Financial Institution G to correctly process Taxpayer A's direct rollover request from Plan B. Taxpayer A further represents that Amount 6 and Amount 7 have not been used for any other purpose.

Taxpayer A participated in Plan B, an employee stock ownership plan ("ESOP"), maintained by Employer F for its employees. Financial Institution G was the Trustee for Plan B. Taxpayer A represents that Plan B is qualified under sections 401(a) and 4975(e)(7) of the Code.

On February 22, 2013, Taxpayer A terminated employment with Employer F and completed a distribution form in which he requested a direct rollover of his entire ESOP account balance equal to Amount 1 to IRA C, an IRA he established with Financial Institution H for purposes of the rollover.

Since the stock of Employer F was not publicly-traded, Plan B permitted participants to "put" or sell the shares held in their ESOP accounts to Employer F. In lieu of Employer F purchasing the shares, Plan B could cover the put option by purchasing the shares with cash and a promissory note issued and executed by Plan B's Trustee, Financial Institution G.

Pursuant to the above provisions of Plan B, Taxpayer A's distribution from Plan B was to consist of cash equal to Amount 2 and a promissory note with an initial outstanding balance equal to Amount 3 ("Promissory Note"). The Promissory Note provided for five annual installments of principal and interest equal to Amount 6. On March 6, 2013, Plan B directly rolled over Amount 2 to IRA C. However, Plan

B failed to distribute the Promissory Note to Taxpayer A or directly roll it over to IRA C.

On March 12, 2014, Financial Institution G, as Trustee for Plan B, sent the first installment due under the Promissory Note to Taxpayer A in the form of a check equal to Amount 6. Unsure how to proceed, Taxpayer A deposited the check on March 20, 2014, into Account D, Taxpayer A's non-IRA savings account maintained by Financial Institution H. Taxpayer A also withdrew an amount equal to Amount 5 from savings Account D. Account D held funds in excess of Amount 5. On May 8, 2014, within 60 days of the distribution of Amount 6, Amount 4 (Amount 6 less Amount 5) was transferred from Account D to IRA C. An amount equal to Amount 5 was retained in Account D.

While preparing Taxpayer A's federal Income Tax Return for the 20 taxable year, Taxpayer A's tax return preparer noticed that Taxpayer A had received two Forms 1099-R from Financial Institution G. One of the Forms reported the distribution of Amount 2 as non-taxable because of the direct rollover of Amount 2 into IRA C. The second Form 1099-R reported the distribution of Amount 3, the initial balance of the Promissory Note, which Taxpayer A never received, as an early, taxable distribution from Plan B.

After discussing the distributions with his tax preparer, Taxpayer A contacted Financial Institution G, which discovered that it had failed to send Taxpayer A or roll over the executed Promissory Note. Taxpayer A received the Promissory Note on May 1, 2014, and, on May 8, 2014, Taxpayer A attempted to deposit the Promissory Note into IRA C. However, Financial Institution H ultimately determined that it could not accept the Promissory Note. After learning of Financial Institution H's decision, Taxpayer A established IRA E with Financial Institution G and assigned the Promissory Note to Financial Institution G on July 1, 2014. On July 16, 2014, the Promissory Note, which had an outstanding balance equal to Amount 7, was credited to IRA E. Regarding the first installment made under the Promissory Note, on July 3, Financial Institution H transferred Amount 4 from IRA C back to Account D, and on the same date, it paid Amount 6 from Account D to Financial Institution G. Financial Institution G credited Amount 6 to IRA E on July 16, 2014.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to: (1) the Promissory Note, with a current outstanding balance equal to Amount 7, and (2) Amount 6, the first installment payment made under the Promissory Note.

With respect to your ruling requests, section 401(a) of the Code provides the qualification rules applicable to retirement plans set up by employers exclusively to benefit their employees and their beneficiaries.

Section 4975(e)(7) of the Code provides that an "employee stock ownership plan" (ESOP) is a defined contribution plan -- (A) which is a stock bonus plan which is qualified, or a stock bonus plan and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and (B) which is otherwise defined in regulations prescribed by the Secretary.

Section 402(a)(1) of the Code provides that except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) of the Code which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified employees trust is paid to the employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(3)(A) of the Code provides, generally, that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or a portion of the balance to the credit of an employee in a qualified trust, except that such term shall not include:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --

- (i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or
- (ii) for a specified period of 10 years or more,
- (B) any distribution to the extent the distribution is required under section 401(a)(9), and
- (C) any distribution which is made upon hardship of the employee.

Section 402(c)(6)(A) of the Code provides that the transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

Section 402(c)(6)(B) of the Code provides that the excess of the fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

Section 402(c)(6)(D) of the Code provides that no gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

Section 402(c)(8) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions."

Section 1.401(a)(31)-1 of the federal Income Tax Regulations ("Regulations"), Question & Answer -3, provides, generally, that a direct rollover that satisfies section 401(a)(31) of the Code is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee. A direct rollover may be accomplished by any reasonable means of direct payment to an eligible retirement plan. Reasonable means of direct payment include, for example, a wire transfer or the mailing of a check to the eligible retirement plan.

Section 1.401(a)(31)-1 of the Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability

to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A are consistent with Taxpayer A's assertion that his failure to accomplish a rollover of a portion of Amount 1, Amount 6 and Amount 7, from Plan B to an IRA was due to the failure of Financial Institution G to correctly process Taxpayer A's direct rollover request from Plan B.

Specifically, Taxpayer A formally requested a direct rollover of his entire account balance under Plan B to IRA C. However, Financial Institution G, the Trustee of Plan B, failed to distribute the Promissory Note to Taxpayer A or roll it over into an IRA. When Taxpayer A contacted Financial Institution G, Financial Institution G discovered it had failed to effectuate Taxpayer A's intent to roll over all of the proceeds from his account in Plan B and promptly distributed the Promissory Note to Taxpayer A on May 1, 2014. Taxpayer A attempted to deposit the Promissory Note into IRA C; however, Financial Institution H would not accept the note. On July 1, 2014, Taxpayer A assigned the Promissory Note to Financial Institution G, which credited the Promissory Note to IRA E on July 16, 2014.

Regarding the first installment payment made under the Promissory Note, Amount 6 was distributed on March 12, 2014. On March 20, 2014, Taxpayer A deposited the check equal to Amount 6 into Account D, and on the same date withdrew Amount 5. Account D held funds in excess of Amount 5. On May 8, 2014, Amount 4 (Amount 6 less Amount 5) was transferred to IRA C. On July 3, 2014, Financial Institution H transferred Amount 4 from IRA C to Account D, and paid Amount 6 from Account D to Financial Institution G as trustee of IRA E.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 6 and the Promissory Note, with a current outstanding balance equal to Amount 7. Provided all other requirements of section 402(c)(3), except the 60-day requirement, were met with respect to the contributions of Amount 6 and Amount 7 to IRA E, such contributions will be considered rollover contributions within the meaning of section 402(c)(3).

This letter ruling is based on the assumption that Plan B is a plan qualified within the meaning of section 401(a) of the Code, and an ESOP as defined in 4975(e)(7).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which

may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact _____ at.
Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted copy of this letter

cc: